

BARRON LAMONT JONES 52397  
Full Name/Prisoner Number

P.O. DRAWER 1328, LOS LUNAS N.M.  
Complete Prison Address (Place of Confinement)

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

FEB 13 2008

MATTHEW J. DYKMAN  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CIV - 08 - 0168 WJ LCS

Civil Action No. \_\_\_\_\_  
(To be supplied by the Court)

BARRON LAMONT JONES 52397, Applicant,  
(Full Name and Prisoner Number)

v.

ROBERT ULIBARRI, Respondent,  
(Name of Warden, Superintendent, jailor  
or authorized person having custody of  
applicant) (Do not use et al.)

and

The Attorney General of the State of

GARY K. KING, Additional Respondent.

APPLICATION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

Note: If the applicant is attacking a judgment which imposed a sentence to be served in the future, applicant must fill in the name of the state where the judgment of conviction was entered. If the applicant has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

### CONVICTION UNDER ATTACK

- 1) Name and location of the court which entered the judgment of conviction under attack 2ND JUDICIAL DISTRICT COURT, COUNTY OF BERNALILLO  
STATE OF NEW MEXICO
- 2) Date judgment of conviction was entered MAY 22, 2006
- 3) Case number 05-04632
- 4) Type and length of sentence imposed (7) SEVEN YEARS
- 5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ☒ No ☐
- 6) Nature of the offense involved (all counts) 1 COUNT (SHOPLIFTING) 250<sup>00</sup>  
1 COUNT (COMMERCIAL BURGLARY)
- 7) What was your plea? (check one)  
Not Guilty ☐ Guilty ☒ Nolo Contendere ☐  
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
N/A
- 8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement PLED Guilty to Commercial Burglary - A Lesser <sup>OFFENSE</sup> of Count  
1 (30-16-3) A Fourth degree Felony, Shoplifting (or 250<sup>00</sup> (NM 30-16-20(A)) A Fourth Degree Felony to  
Run Consecutive with A 4 year Absentee for a total of 7 years.
- 9) Kind of trial (check one) Jury ☐ Judge only ☐
- 10) Did you testify at trial? Yes ☐ No ☐

# DIRECT APPEAL

11) Did you appeal from the judgment of conviction? Yes ☐ No ☐

12) If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order):

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13) If you did not appeal, explain briefly why you did not:

FORFEITED MY RIGHT TO APPEAL WHEN I SIGNED THE PLEA BARGAIN.

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a) Did you seek permission to file a late appeal? Yes ☐ No ☒

## POST-CONVICTION PROCEEDINGS

14) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

15) If your answer to 14 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court 2<sup>ND</sup> JUDICIAL DISTRICT COURT BERNALILLO, NEW MEXICO

2. Nature of proceeding HABEAS PETITION

3. Claims raised INEFFECTIVE ASSISTANCE OF COUNSEL - CHALLENGES THE

CONVICTION FOR COMMERCIAL BURGLARY BASED ON 30-16-20 SUBSECTION C. AN INDIVIDUAL CHARGE WITH A VIOLATION OF THIS SECTION SHALL NOT BE CHARGE WITH A SEPARATE OR ADDITIONAL OFFENSE ARISING OUT OF THE SAME TRANSACTION

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

5. Result SUMMARILY DISMISSAL

6. Date of result 10-06

7. Did you appeal the result to the highest state court having jurisdiction?  
Yes ☒ No ☐ If you did appeal, give the name of the court where the  
appeal was filed, the result, the case number, citation and date of the court's  
decision (or attach a copy of the court's opinion or order)

SUPREME COURT OF NEW MEXICO - CERTIORARI - DENIED APRIL 24, 2007

8. If you did not appeal, briefly explain why you did not

b) As to any SECOND petition, application or motion, give the following  
information:

1. Name of court 2<sup>ND</sup> JUDICIAL DISTRICT COURT BERNALILLO COUNTY, NEW MEXICO

2. Nature of proceeding HABEAS PETITION

3. Claims raised CHALLENGES CONVICTION FOR COMMERCIAL BURGLARY BASED ON 30-16-20(C)

WHICH STATES "AN INDIVIDUAL CHARGED WITH VIOLATION OF THIS SECTION SHALL NOT BE CHARGED WITH  
A SEPARATE OR ADDITIONAL OFFENSE ARISING OUT OF THE SAME TRANSACTION"

4. Did you receive an evidentiary hearing on your petition, application or  
motion? Yes ☒ No ☐

5. Result PETITION DENIED

6. Date of result DECEMBER 04, 2007

7. Did you appeal the result to the highest state court having jurisdiction?  
Yes ☐ No ☒ If you did appeal, give the name of the court where the  
appeal was filed, the result, the case number, citation and date of the court's  
decision (or attach a copy of the court's opinion or order)

8. If you did not appeal, briefly explain why you did not I did NOT Appeal

*Because I received the Courts Judgement until after the dead line to File for certiorari had expired. ALSO, I am Anxious to have this matter Resolved*

c) As to any THIRD petition, application or motion, give the following information:

1. Name of court N/A

2. Nature of proceeding \_\_\_\_\_

3. Claims raised \_\_\_\_\_

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_ No \_\_\_

5. Result \_\_\_\_\_

6. Date of result N/A

7. Did you appeal the result to the highest state court having jurisdiction? Yes \_\_\_ No \_\_\_ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) \_\_\_\_\_

8. If you did not appeal, briefly explain why you did not \_\_\_\_\_

### CLAIMS

16) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

Claim One: Being charged and convicted of Commercial Burglary is a direct violation of 30-16-20 subsection(c) which states 'AN INDIVIDUAL CHARGED WITH A VIOLATION OF THIS SECTION SHALL NOT BE CHARGED WITH A SEPARATE OR ADDITIONAL OFFENSE ARISING' out of same transaction CAS WELL AS SHOPLIFTING)

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim) The state of NEW Mexico constructed this Law 30-16-20(c) to AVOID the over prosecution of possibly violators. I believe this Law was constructed primarily to protect defendants from this type of situation.

The State of NEW Mexico should have charge me, Barron Jones, with either shoplifting over 250 or Commercial Burglary.

(2) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?  
Yes \_\_\_ No \_\_\_

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not \_\_\_\_\_

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No \_\_\_

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Supplement for writ of Habeas Corpus - 05-04632, 2<sup>nd</sup> Judicial District Court  
Bernalillo County, NEW MEXICO / Denied 12-4-08

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ☒  
No \_\_\_

(f) Did you appeal from the denial of your motion or petition?  
Yes \_\_\_ No X

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes \_\_\_ No \_\_\_, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) If your answer to question (e), (f) or (g) is "No," briefly explain I did not

Appeal via certiorari, because the deadline had expired and further more I am  
Anxious to have this matter resolved  
Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Claim Two: Ineffective Assistance of Counsel

\_\_\_\_\_

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim)

My attorney should have been aware of the statutes  
concerning shoplifting 30-16-20(c). Instead of allowing me to be bullied  
by the state's prosecutors, with overcharging.

(2) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes \_\_\_ No \_\_\_

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not \_\_\_\_\_  
\_\_\_\_\_

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes A No \_\_\_

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Supplement for Habeas Petition, 05-44632, 2nd Judicial District Court  
Bernalillo County, New Mexico & DENIED

(e) Did you receive an evidentiary hearing on your motion or petition? Yes \_\_\_ No \_\_\_

(f) Did you appeal from the denial of your motion or petition? Yes \_\_\_ No \_\_\_

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes \_\_\_ No \_\_\_, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) If your answer to question (e), (f) or (g) is "No," briefly explain \_\_\_\_\_  
\_\_\_\_\_



Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Claim Three: COERCION - By SURPLAGE OF charges - ORIGINALLY indicted

For Aggravated Burglary as well as shoplifting for removing tags, shoplifting for concealment and Criminal Trespass.

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim) The state charge me with Aggravated Burglary, two counts of shoplifting and criminal trespass. According to 30-16-20(B), the state of New Mexico had no right to charge me with two counts of shoplifting and Aggravated Burglary. I should have been charge with either 1 count of shoplifting or Aggravated Burglary not both. If I had been aware of the states limitations, I would have never signed a plea for commercial Burglary and shoplifting

(2) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not

I did not appeal because the forfeited the appeal process with the signing of the plea agreement

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

Habeas Corpus Petition, 2nd Judicial District Court, Bernalillo County  
NEW MEXICO - Summary Dismissed 10/06

(e) Did you receive an evidentiary hearing on your motion or petition?  
Yes ☐ No ☒

(f) Did you appeal from the denial of your motion or petition?  
Yes ☒ No ☒

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ☒ No ☐ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

The Attorney John Walker did not feel this issue was pertinent to  
my second state Habeas petition

(h) If your answer to question (e), (f) or (g) is "No," briefly explain

#### Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

N/A

17) Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

18) If you answered "No" to question 17, state which claims have not been so presented and briefly give your reasons(s) for not presenting them \_\_\_\_\_

19) If any of the claims listed in this application were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give your reasons for not presenting them \_\_\_\_\_

20) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes \_\_\_ No X

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

- a) Name and location of court \_\_\_\_\_
- b) Type of proceeding \_\_\_\_\_
- c) The issues raised \_\_\_\_\_
- d) The result \_\_\_\_\_

### SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. § 2244, *as amended by* Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

21) If you are raising a claim which you have not presented in a prior application, have you obtained an order from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the application? Yes \_\_\_ No \_\_\_ Please attach a copy of the order.

22) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes \_\_\_ No X If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding

\_\_\_\_\_

\_\_\_\_\_

### LEGAL REPRESENTATION

23) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing N/A

(b) At arraignment and plea Jim Loonan, 505 Central, NW  
ALBUQUERQUE, NEW MEXICO 87102

(c) At trial " "

(d) At sentencing Jim Loonan, 505 Central, NW  
ALBUQUERQUE NEW MEXICO 87102

(e) On appeal \_\_\_\_\_

(f) In any post-conviction proceeding John Walker 505 Central Ave. NW  
ALBUQUERQUE NEW MEXICO 87102

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

### OTHER CONVICTIONS

24) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes X No \_\_\_

25) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes \_\_\_ No X

(a) If so, give name and location of court which imposed sentence to be served in the future \_\_\_\_\_

(b) and give date and length of service to be served in the future \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes \_\_\_ No \_\_\_

Wherefore, applicant prays that the court grant him such relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

Barton Jones  
Applicant's Original Signature

\_\_\_\_\_  
\_\_\_\_\_  
Attorney's Full Address and  
Telephone Number

#### DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the applicant in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U. S. C. § 1746; 18 U. S. C. § 162 1.

Executed at CUNEIF-LOS LUNAS NM on 2-06-08  
(Location) (Date)

Barton Jones  
Applicant's Original Signature

1  
2 NO. 30,265

3 BARRON LAMONT JONES,

4 Petitioner,

5 v.

6 STATE OF NEW MEXICO,

7 Respondent.

Bernalillo  
District Court  
CR-05-4632/CR-06-2200

11 ORDER

12 This matter coming on for consideration by the Court upon Petition for Writ of  
13 Certiorari filed pursuant to Rule 12-501 of the Rules of Appellate Procedure, and the  
14 Court having considered said petition, and being sufficiently advised, Chief Justice  
15 Edward L. Chávez, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra  
16 Jimenez Maes, and Justice Richard C. Bosson concurring;

18 NOW, THEREFORE, IT IS ORDERED that the Petition for Writ of Certiorari is  
19 denied.  
20

21 IT IS SO ORDERED.

22  
23  
24 ( S E A L )

WITNESS, The Hon. Edward L. Chávez, Chief  
Justice of the Supreme Court of the State of  
New Mexico, and the seal of said Court this  
24th day of April, 2007.

25 Madeline Garcia  
26 Madeline Garcia, Chief Deputy Clerk  
27

28 ATTEST: A TRUE COPY  
Madeline Garcia  
Clerk of the Supreme Court  
of the State of New Mexico

ENDORSED

FILED IN MY OFFICE THIS

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

MAY 03 2007

*Quanita M. Duran*  
CLERK DISTRICT COURT

BARRON JONES,  
Defendant,

No. D-0202-CR-2005-04632

vs.

STATE OF NEW MEXICO,  
Plaintiff.

**AMENDED ORDER OF APPOINTMENT**

THIS MATTER HAVING COME BEFORE the Court and the Court being fully advised of the circumstances;

**THE COURT FINDS:**

- ☒ 1. The Defendant is incarcerated.  
☐ 2. The Defendant is not incarcerated.

**THE COURT FURTHER FINDS:**

- ☒ 1. The Defendant is indigent and is unable to obtain counsel. (Check box 1 below).  
☐ 2. The Defendant is not indigent and is unable to obtain counsel. (Check box 2 below).

**IT IS THEREFORE ORDERED THAT:**

- ☒ 1. The Public Defender Department is hereby appointed to represent the defendant in the above-entitled cause without payment of the application fee.  
☐ 2. The defendant shall reimburse the State of New Mexico in an amount of not less than \$ \_\_\_\_\_ for legal representation and related expenses.  
☒ 3. Petitioner's counsel shall file an Amended Petition or Notice of Non-Intent to file an Amended petition within 90 days of the date of the filing of the Order.

**ROSS C. SANCHEZ**

**Ross C. Sanchez**  
**DISTRICT JUDGE**

**IMPORTANT NOTICE:** If the Public Defender Department is appointed, please mail a copy of the ORDER OF APPOINTMENT and a copy of the PRO-SE Petition to the Post-Conviction/Habeas Division, Office of the Public Defender, 505 Central Ave., NW, Albuquerque, NM 87102.